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ARIZONA ATTORNEY GENERAL

June 23, 1954
Opinion No. 54-92

TO: The Honorable H. Earl Rogge, Jr.
Greenlee County Attorney
Courthouse
Clifton, Arizona

RE: Naturalization fees collected
by Clerk of the Superior Court.

QUESTION: May the Clerk of the Superior
Court keep for his use or
benefit one-half of the fees
collected by him in naturaliza-
tion proceedings?

Section 402 of the Naturalization Act, as appears on page 284, Vol. 1, Arizona Code Annotated 1939, provides for fees to be collected by the Clerk of each and every court exercising jurisdiction in naturalization cases. It provides that the Clerk of the Court may retain one-half of the fees up to the sum of Three Thousand Dollars (\$3,000.00) received from naturalization proceedings. The pertinent part of Section 402, supra, is as follows:

"402. (Fees--Disposition of--Clerical assistance.)--The clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:
* * * * *

The clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of \$3,000, and all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to the said service as in case of other fees to which the United States may be entitled under the provisions of this chapter."

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However, in 1952, this section of the Naturalization Act was amended and on page 54 of the 1953 Supplement, Arizona Code, 1939, appears Section 8:1455, which supersedes Section 402 of the Naturalization Act. Sub-section (c) provides that any Clerk of a naturalization court shall pay to the Attorney General of the United States one-half of all fees up to the sum of Six Thousand Dollars (\$6,000.00). No mention is made of the disposition of the other one-half of the fees in this section.

Therefore, since the amendment, effective June 30, 1952, there can be no question that the remaining one-half of the fees collected by the Clerk of the Superior Court shall be disposed of as provided by state law.

Section 12-709, A.C.A. 1939, provides that regular salaries only are to be received in full payment of all services performed by any state or county official or employee. Said section is as follows:

"12-709. Legal salary only to be received and in full, payable semi-monthly. -- The salaries provided in this chapter shall be in full compensation for all services rendered by any officer, deputy or assistant. Salaries shall be paid twice in each month on regular days not more than sixteen (16) days apart. All state or county officers, employees, members of boards and commissions not mentioned in this chapter, and all deputies, stenographers, clerks and employees of any officer, board or commission, or of any institution, shall receive the salary provided by the laws creating or authorizing their respective positions, and shall not, under any pretext, receive any salary or emolument in excess of the salary so provided by law."

Section 34-139, A.C.A. 1939, provides that all fees collected by county or precinct officers shall be paid into the county treasury. Said section is as follows:

"34-139. Monthly statement of fees collected-- Payment to county. -- County and precinct officers entitled to receive or collect fees, except notaries public, shall at the end of each month

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make a duplicate itemized statement of all fees earned during the last month in the conduct of their official duties. Such itemized statement shall be verified under oath, and on the first day of each month one statement shall be filed with the clerk of the board of supervisors and one with the county treasurer, and all fees earned, as shown by such statement, shall be paid into the county treasury at the time of the filing of such statement. The sheriff of any county wherein any United States prisoner is received or kept by him, shall in like manner pay into the county treasury the money received by him therefor."

Therefore, the only salary or remuneration a Clerk of the Superior Court is to received for performing his official duties is that as provided by state law. All fees received by him as Clerk of the Superior Court must be paid into the county treasury.

The question may arise, was the Clerk of the Superior Court entitled to one-half of the fees collected in naturalization filing before the amendment of June, 1952? In 8 U.S.C.A. 410, note 8, there are annotated many cases decided under Section 402 of the old naturalization law. The courts have held that under former Section 402, ownership and disposition of fees that were not paid to the federal government were controlled by state law. Clerks of state courts who, by state law, were on salaried basis and were required to account for moneys coming into their hands, could not retain fees in naturalization cases for their personal use. *MULCREVY v. SAN FRANCISCO, CAL.*, (1914) 34 S.Ct. 260, 231 U.S. 669, 58 L.Ed. 425; *BERKSHIRE COUNTY v. CANDE*, (1915) 109 N.E. 838, 222 Mass. 87; *BARRON COUNTY v. BECKWITH*, (1910) 124 N.W. 1030, 142 Wis. 519. Contra, *FIELDS v. MULTNOMAH COUNTY, OREGON*, (1913) 128 P. 1045, 64 Or. 117, 44 L.R.A., N.S., 322; *ELDREDGE v. SALT LAKE COUNTY*, (1910) 106 P. 939, 37 Utah, 183.

Therefore, even before the amendment all fees collected by the Clerk of the Superior Court of the State of Arizona could not be retained by the said Clerk, and must be paid into the county treasury.

ROSS F. JONES
The Attorney General

IRWIN CANTOR
Assistant to The
Attorney General